



IMO
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**An Act to incorporate the provisions of the Convention for the
Suppression of Unlawful Acts against the Safety of Maritime
Navigation, 2005 (2005 SUA Convention) and the Protocol for
the Suppression of Unlawful Acts against the Safety of Fixed
Platforms Located on the Continental Shelf, 2005 (2005 SUA
Protocol)**

**A Legislation Drafting Project submitted in partial fulfillment
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CHAPTER 1

EXPLANATORY NOTE.

1. INTRODUCTION

Ships have been with mankind since time immemorial, and employed over the centuries to undertake various activities at sea for the sustenance of the human society. The prior uses of ships on the sea include carriage of goods, fishing, adventure, conquest, transportation from one place to the other, and facilitating travels to discover new regions, peoples and cultures. Today, the uses of ships at sea are still the same, save to indicate that conquest is no longer common in the modern dispensation.

In contemporary times, the advent of sophisticated ships has expanded their uses to include facilitating recreation, tourism, and laying of cables and pipelines to improve communication. Modernisation has also led to enhanced industrialisation; characterised by manufacturing and production of goods, which increased global trading and carriage of goods. Also the uneven distribution of natural resources has contributed to sea transportation of commodities such as petroleum, timber, food stuff and other natural resources from one part of the globe to the other. Thus, Maritime transport is essential for sustaining the world's economy as it is estimated that over ninety percent (90%) of international trade is carried on ships through the sea.¹

Furthermore the need for advancement of society has translated into marine scientific research, exploration and exploitation of marine resources, and related activities at sea. To be able to harness the resources of the sea, international law makes provision for States to construct artificial islands, installations and structures on the seabed for such purposes. The most widely used installations and structures constructed at sea are fixed platforms employed for the extraction of hydrocarbons commonly known as oil and gas. Natural oil and gas are a significant source of energy and an important source of income to States that control these resources.

¹ Talley, Wayne K; Maritime Safety, Security and Piracy, Informa, London, 2008 p.13.

However, As humans strive to find diverse means to utilise and take dominion over the seas for the advancement and betterment of mankind, some unscrupulous persons on the other hand skim ways to commit various maritime crimes to enrich themselves, score political points, intimidate populations, and for other unstated purposes. These crimes affect the international community as a whole and prevent or limit the enjoyment of the sea as a common heritage endowed on humanity by nature.

Up until the later part of the 20th century, the principal threat to the security of shipping came from pirates who in the pursuit of personal wealth, usually employ force to take control of ships and steal its cargo and who normally operated from another ship.² Today however, in addition to piracy there are a range of unlawful acts at sea including maritime terrorism, armed robbery against ships, smuggling and human trafficking, drug trafficking, illicit trafficking of arms and weapons of mass destruction, and other crimes perpetuated at sea. As modernisation and sophistication evolve daily, there is a likelihood that other trends will emerge which cannot be envisaged as at now.

Adoption of new ways to effect crime at sea is now commonplace, making the maritime industry increasingly unsafe. Targeting and attacking of ships by terrorist organisations has escalated considerably in the past ten years.³ More over vessels are being used as the primary platform for launching or conducting such attacks. A growing concern is that terrorist may also wish to gain control of the maritime conveyances for the purpose of using them as a delivery system for weapons of mass destruction⁴. Maritime terrorism is a big security challenge for the world; especially considering the negative effect it is capable of having on shipping and international trade as well as the marine environment. Also the increased terrorist's attacks on ships have led to loss of life and property which is unquantifiable. There have series of attacks on ships and other maritime property in recent times. For example persons alleged to be affiliated with the Al Qaeda launched a bomb attack against the United States Navy destroyer *Cole* in 2000 in Yemen.⁵ Another one was an attack against a French oil-tanker the *Limburg* off the cost of Yemen in 2002 which resulted in the dead of many people with several injured.⁶ In February 2004 a ferry

² Bennet, C.E John; Maritime Security in Bragdon, R Clifford; Transportation Security, Elsevier Inc, Oxford, 2008, p. 149-181 at p. 151.

³ McNicholas, Michael; Maritime Security, Elsevier Inc, Oxford, 2008, p. 248.

⁴ Ibid p.248.

⁵ Klein, Nathalie; Maritime security and the Law of the Sea, Oxford University Press, 2011, p.148.

⁶ Ibid.

with a total of 1050 passengers on board sank off the coast of the Philippines as a result of the deposit of a TNT-bomb hidden in a television set in the under-deck of the vessel. Also on 19 June 2008 there was an attack on *Bonga oil field* by armed men with speedboats. Several workers were wounded during that attack.⁷

It is evident that the maritime arena is becoming increasingly unsafe not only to the ships and other maritime property but the lives of those who venture out on it. Accordingly, in order to protect ships, guarantee the security of fixed platforms for the exploitation and exploration of marine resources there is the need to ensure a safe and secured maritime environment for continued development of global trade and related matters, as well as harnessing the resources of the sea.

This explanatory note is a prelude to the drafting of a domestic legislation to give effect to the provisions of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention),⁸ and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005 (2005 SUA Fixed Platforms Protocol).⁹

The scope of this exposition will first of all center on outlining the historical antecedents that led to the promulgation of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (1988 SUA Convention),¹⁰ and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 (1988 SUA Fixed Platforms Protocol).¹¹ This will include a brief outline of the relevant provisions of these two instruments.

Furthermore, the historical developments that led to the 2005 SUA Convention and the 2005 SUA Fixed Platforms Protocol will be considered. Since the emphasis of this work is on this Convention and Protocol, the relevant provisions will be discussed in detail to illustrate the rationale behind their promulgation.

In addition, there will be a discussion as to why a State has to be party to the Convention and Protocol. The emphasis here will be on Ghana, and the discussion will demonstrate

⁷ Rupert, Herbert-Burns; "Tankers, Specialised Production Vessels, And Offshore Terminals: Vulnerability and Security in the International Maritime Oil Sector" in Herbert-Burns, Bateman, and Lehr; Lloyd's MIU Hand Book of Maritime Security; CRC Press, London, 2009, p.134.

⁸ Adopted in London on 14 October 2005, entered into force 28 July 2010.

⁹ Adopted in London on 14 October 2005, entered into force 28 July 2010.

¹⁰ Adopted in Rome on 10 March 1988, entered into force on 1 March 1992.

¹¹ Adopted in Rome on 10 March 1988, entered into force on 1 March 1992.

why the country has to incorporate the provisions of these two instruments into the laws of Ghana.

The last part will concentrate on the synopsis of the draft law, which will include an explanation of the sections contained in the proposed new law for Ghana.

Also attached are Instruments of Accession to the Convention and the Protocol.

2. HISTORICAL ANTECEDENTS.

2:1 THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, 1982 (UNCLOS).¹²

The act of piracy is an old phenomenon which dates back to around 1200 B.C.¹³ It continued over the centuries as one of the leading threats to maritime security. The offence was codified in the Geneva Convention on the High Seas 1958¹⁴, which was reiterated in UNCLOS 1982.

The offence of piracy consist of any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft or in a place outside the jurisdiction of any State.¹⁵ Jurisdiction over the offence is universal and any State has the power to apprehend and bring such pirates to trial before the domestic courts of that State. Thus every State has the right to seize the pirate ship, arrest the pirates and seize the property on board.¹⁶

Due to its negative effects on shipping which is a global venture and beneficial to the international community, piracy is considered as a universal threat and a person committing piracy is said to be a *hostis humanis generis* (common enemy of all mankind). A pirate is treated thus since pirates do not confine their attacks to the vessels of a particular State, but attack vessels and nationals of many States indiscriminately.

For an unlawful act committed at sea to be perceived as a piratical act, it must satisfy the elements enshrined in the definition of piracy. The definition is deemed to have a narrow

¹² Adopted in Montego Bay on 10 December 1982, entered into force on 16 November 1994.

¹³ McNicholas, Michael; Op cit.; p. 161.

¹⁴ Adopted in Geneva on 27 April 1958.

¹⁵ Article 101, 1982 UNCLOS. and Article 15 1958 convention on the High Seas.

¹⁶ Article 105, 1982 UNCLOS.

scope and inadequate to address many unlawful acts of violence perpetrated at sea. Thus unlawful acts at sea which falls outside the purview of the enumerated elements defining piracy are not covered by UNCLOS. This non encompassing character of the definition, made it both legally and technically challenging to prosecute certain unlawful acts committed at sea especially where such offences are not catered for under national law. For example there are no rules in UNCLOS dealing with incidents of maritime terrorism; which relates to acts of violence for political and ideological reasons, or other unlawful acts committed for unstated reasons.

2.2 THE *ACHILLE LAURO* INCIDENT.

On 7 October 1985, an Italian-flag cruise ship *Achille Lauro* carrying over four hundred passengers and crew on board, was hijacked by certain Palestinian extremists in the Mediterranean Sea. The hijackers (four Palestinians) demanded the release of about fifty Palestinian prisoners held by Israel. When their demands were not being met, they killed one of the passengers (an American citizen) and threw his body overboard. The hijackers finally surrendered to the Egyptian authorities in exchange for a safe flight outside Egypt. However the plane which was expediting their exit from Egypt was intercepted by United States Navy fighter jets forcing it to land at Sicily (Italy). They were subsequently rounded up and taken into custody.

This incident awakened the international community to new phenomena which could not be termed piracy *strict sensu* because of the peculiar elements which create the offence of piracy as illustrated in the definition contained in UNCLOS. The attack also demonstrated the weaknesses of the piracy provisions¹⁷ and the need to formulate rules which could fill the lacuna left by the UNCLOS.

This incident could not be described as a piratical act for various reasons. Although the hijackers did commit acts which could be considered as illegal acts of violence, detention and depredation on the high seas, they were not crew or passengers of another vessel from which they launched their attack. Instead they had embarked on the *Achille Lauro* as normal passengers. Furthermore their motive was not for personal gain but to call attention to their grievances against Israel, and achieve freedom for the Palestinian

¹⁷ Beckman, C Robert; "The 1988 SUA Convention and 2005 SUA Protocol: Tools to Combat Piracy, Armed Robbery, and Maritime Terrorism" in Herbert-Burns, Bateman and Lehr; Lloyd's MIU Handbook of Maritime Security, CRC Press, London, 2009, p. 187-200 at p. 188.

prisoners held by Israel.¹⁸ The incident constituted one of the first genuine acts of maritime terrorism recorded in modern history.¹⁹ The aftermath of the incident also gave rise to a diplomatic row among three States²⁰ as to which of them had custody over the accused terrorists.

In the international community, this hijacking incident marked the beginning of awareness relating to issues of security of international shipping operations and the necessity to enact rules and mechanisms in that direction.

3. BACKGROUND TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, 1988 (1988 SUA CONVENTION).

The *Achille Lauro* incident led to calls by the international community for the development of new and more general international law rules to prevent unlawful acts that threatened not only the safety and security of ships, but their passengers and crew on board those ships. In addition to the *Achille Lauro* hijacking, the concerns of the international community were heightened as a result of series of accidents and reports of crews being kidnapped, vessels being hijacked or being damaged, destroyed and threatened by explosives planted by terrorist.²¹ In some instances people on board those attacked or seized vessels were killed.²² All these apprehension culminated in the appealed to the International Maritime Organization (IMO) to adopt measures to improve the protection of sea-going vessels from terrorist attacks and other unlawful acts of violence at sea.

In November 1985 the fourteenth session of IMO Assembly was convened. During the conference, the United States proposed that measures to prevent such unlawful acts as demonstrated by the incident be developed, which was affirmatively supported by other States.²³ Remembering the tussle that ensued in relation to which State had jurisdiction over the hijackers in the *Achille Lauro* incident, the issue of extradition or prosecution was also given priority at the conference.

¹⁸ Bennet, C.E John; Op.cit. p. 160.

¹⁹ Tuerk, Helmut; Combating Terrorism At Sea: The Suppression of Unlawful Acts against the Safety of Maritime Navigation; in Nordquist, Bymyron H. et.al; Challenges in Maritime Security, Martinus Nijhoff publishers, Leiden Boston, 2008 p. 41-78 at p. 42.

²⁰ The three States were the United State, Italy, and Egypt.

²¹ Herbert-Burns, Rupert; op.cit p. 133-157 at p.140.

²² Ibid.

²³ Tuerk, Helmut; Op.cit., p. 188 and Kraska, James & Pedrozo Raul; International Maritime Security Law, Martinus Nijhoff, Leiden Boston, 2013 p. 802.

Consequently, the Marine Safety Committee issued a circular entitled *Measures to Prevent Unlawful Acts against Passengers and Crews on Board Ships*²⁴ to member States. The IMO also adopted a resolution that called for the development of *Measures to Prevent Unlawful Acts that Threaten the Safety of Ships and their Passengers and Crew*.²⁵ All these documents sought to strengthen the legal regime applicable to ships on international voyages. The guidelines became the first internationally approved formula which sets out what the shipping community had to do in order to provide proper protection against the threat of terrorism and other unlawful acts of violence at sea.

In November 1986, the Governments of Austria, Egypt, and Italy spearheaded a proposal calling on the IMO to enact a convention specifically to address and suppress unlawful acts committed against the safety of maritime navigation which endanger human lives, property and adversely affect the operation of maritime services. They concluded that these issues were of concern to mankind and the international community as a whole. They also presented a draft text which was modeled on existing anti-terrorist conventions relating to aircraft hijacking.²⁶ The approach the international community adopted in those conventions was to consider certain conducts as constituting an offence, regardless of the motivation of the offender. This approach was subsequently incorporated into the 1988 SUA Convention.

The IMO Council unanimously agreed that the matter required immediate attention and action. So in 1987 an international conference was convened in Rome where the draft text prepared by the three States was discussed.

The United States supported by other coastal States with fixed platforms on their continental shelf proposed that such offshore installations could also become targets of terrorist acts and needed to be protected as well. A text in this regard was also drafted.

During the diplomatic conference in 1988, two instruments were therefore adopted. These were the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988 SUA Convention) and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988 SUA Protocol on Fixed Platforms).

²⁴ IMO Doc.MSC/Circ.443, Measures to Prevent Unlawful Acts against Passengers and Crews on Board Ships

²⁵ IMO Doc.A584 (14), Measures to Prevent Unlawful Acts that Threaten the Safety of Ships and their Passengers and Crew.

²⁶ International Convention against the Taking of Hostages (adopted in New York, 17 December 1979) and Hague and Montreal Convention against Airplane Hijacking and Hostage Taking.

3.1 SCOPE OF THE 1988 SUA CONVENTION.

The rationale for the Convention is to ensure that appropriate action is taken against persons who unlawfully and intentionally commit acts against ships which impede the safe navigation of such ships, as well as injure or kill passengers or crew on board those ships.

The Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limits of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.²⁷ However, the Convention does not apply to warships or ships operated by State and being used as naval auxiliary or for customs and police purposes and Government ships operated for non-commercial purposes.²⁸

Throughout the Convention, there is no mention that its provisions are meant to address maritime terrorism. It is suggested that the framers avoided it so as not to formula a definition for it, which has the potential of unnecessarily limiting its scope.

Offences under the Convention cover a wide range of issues aimed at protecting ships at sea and the persons on board same. Member States agreed that the unlawful acts envisaged by the Convention are assigned appropriate punishment in the territory of each State Party.²⁹ Furthermore each State has jurisdiction to try an offender in its domestic court whether or not the offence is not connected to that State in any way. Thus it is immaterial that the offender is not a citizen or the ship is not registered in that State or that the offence did not take place in that territory. Under the Convention, a person commits an offence if the person intentionally and unlawfully undertakes any of the under listed which is likely to endanger the safe navigation of the ship.³⁰

- i. Seizes or exercises control over a ship by force or by any form of intimidation.
- ii. Performs an act of violence against persons on board a ship.
- iii. Destroys a ship or causes damage to a ship or to her cargo.
- iv. Places or causes to be placed on a ship, by any means whatsoever a device or substance likely to destroy that ship or cause damage to the ship or her cargo.
- v. Destroys or seriously damages maritime navigational facilities or seriously interferes with their operation.

²⁷ Article 4(1), 1988 SUA Convention.

²⁸ Article 2(1) & (2), 1988 SUA Convention.

²⁹ Article 5, 1988 SUA Convention.

³⁰ Article 3, 1988 SUA Convention.

- vi. Communicates information of falsehood which has the potential of endangering the safe navigation of a ship.
- vii. Threatens another person or corporate body to commit any of the above offences.

To ensure that perpetrators of these unlawful acts against ships, passengers and crew do not go unpunished, a State Party in whose territory an offender is found has the *locus standi* to prosecute such offender or to extradite same to another State which is party to the Convention to stand trial.³¹

Where a person alleged to have committed an offence under the Convention is found in the territory of a State Party, the competent authority of that State is required to take that person into custody and accord same fair treatment and all the rights available to persons in custody under the laws of that territory.³² In furtherance of this, the State may put the accused before a competent court of jurisdiction. Conversely the State may communicate its desire not to prosecute the accused in its territory and extradite the accused to the territory of another State which makes a request for the extradition of same.³³ In situations where there is an existing extradition treaty between the state having the accused in custody and the state requesting for the extradition, it is provided that the Convention shall serve as a n extradition treaty between the two countries.³⁴ A State Party is required to take the necessary measures to establish jurisdiction over offences envisaged by the Convention if it takes place in its territory, or against a ship flying the flag of that country.³⁵ Also it must exercise jurisdiction if the offence is committed by a stateless person, or against a citizen of that State, or it is meant to compel the State to do or obtain from doing something.³⁶

Also, State Parties are obliged to afford one other the greatest measure of assistance in connection with criminal proceedings to prosecute the offenders of crimes perpetuated under the Convention.³⁷

³¹ Article 10(1), 1988 SUA Convention.

³² Article 10(2), 1988 SUA Convention.

³³ Article 11, 1988 SUA Convention.

³⁴ Article 11(2), 1988 SUA Convention.

³⁵ Article 6(1), 1988 SUA Convention.

³⁶ Article 6(2), 1988 SUA Convention.

³⁷ Article 12(1), 1988 SUA Convention.

4. PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF, 1988 (1988 SUA PROTOCOL ON FIXED PLATFORMS).

The *Achille Lauro* incident also influenced the promulgation of this Protocol. The idea was born when the United States supported by other coastal States with fixed platforms on their continental shelf observed that such offshore installations could also become targets of terrorist attacks and needed to be protected. The *Ad Hoc* Preparatory Committee decided this issue needed to be dealt with in a separate instrument, hence this Protocol as supplementary to the 1988 SUA Convention.³⁸ The offshore installations employed for the exploration and exploitation of marine resources are considered vulnerable due to where they are located; in the sea away from the vigilance of security personnel. The text was adopted at the same diplomatic conference with the 1988 SUA Convention.

4.1 SCOPE OF THE 1988 SUA FIXED PLATFORMS PROTOCOL.

Its provisions are *in pari materia* with those of the 1988 SUA Convention, but extended to fixed platforms located on the continental shelf. Under the Protocol, a person commits an offence if the person intentionally and unlawfully undertakes any of the under listed which is likely to endanger the safety of a fixed platform.³⁹

- i. Seizes or exercises control over a fixed platform by force or by any form of intimidation.
- ii. Performs an act of violence against a person or persons on board a fixed platform.
- iii. Destroys a fixed platform or causes damage to it.
- iv. Places or causes to be placed on a fixed platform, by any means whatsoever a device or substance likely to destroy that fixed platform.
- v. Injures or kills any person in connection with the commission of any of the above unlawful acts.

Under the Protocol, it is also an offence when a person attempts, abets, or threatens, to commit any of the above offences against a fixed platform.⁴⁰

³⁸ Tuerk, Helmut; op.cit p.51.

³⁹ Article 2(1), 1988 SUA Fixed Platforms Protocol.

⁴⁰ Article 2(2), 1988 SUA Fixed Platforms Protocol.

5. BACKGROUND TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, 2005 (2005 SUA CONVENTION).

On 11 September 2001 terrorists hijacked four aircrafts shortly after takeoff in the United States of America (US). Two crashed into the World Trade Center twin towers killing all the passengers on board the plane, as well as many shoppers and workers on ground. The third one crashed into the Pentagon; a US security base. The fourth plane crashed into a field in Pennsylvania. It is estimated that about 2,996 people lost their lives in the 11 September attacks.⁴¹ The manner in which the attacks were carried out indicated that terrorists would employ different mechanisms to cause harm and havoc.

These attacks were not only condemned by the international community, but spearheaded discussions on how best to tackle terrorists' activities to protect humanity. In the maritime industry, this brought an analogous realisation that a ship could be used in a terrorist attack just as easily as an aircraft, and with potentially much greater effect. This then called for the need to adopt measures to protect ships as objects of property and human beings on board, against such attacks.

Invariably, it became obvious that the 1988 SUA Convention and its Protocol required updating to address modern day terrorists threats including threats from biological, chemical and nuclear weapons or material. It was also evident that one of the primary limitations of the 1988 Convention was that it failed to grant jurisdiction to States to exercise some control in the prevention and suppression of offences contained in the Convention. Even though the Convention had stipulated that States Parties shall co-operate in the prevention of offences by taking all practicable measures to prevent preparation in their respective territories for commission of the unlawful acts envisaged by the Convention,⁴² the Convention failed to prescribe what the preventive measures entail or its extent.

⁴¹ <http://www.statisticbrain.com/911-death-statistics/> (last accessed on 30 April 2014).

⁴² Article 13(1), 1988 SUA Convention.

As a preliminary measure, the IMO adopted Assembly Resolution A.924 (22)⁴³ calling for a review of the existing measures and procedures to prevent acts of terrorism that threaten the security of passengers and crews and the safety of ships.⁴⁴ The IMO took a cue from several United Nations General Assembly (UNGA) documents. The documents included the Declaration on Measures to Eliminate International Terrorism, annexed to UNGA Resolution 49/60 of 9 December 1994, by which States reaffirmed an unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whoever committed⁴⁵. Also, the UNGA Resolution 51/210 of 17 December 1996 on *Measures to eliminate international terrorism* was instrumental. Furthermore the United Nations Security Council (UNSC) adopted Resolution 1373⁴⁶ after the 11 September 2001 attacks. Its main objective was to encourage States to prevent and suppress the financing of terrorist acts, by ensuring that the State or its nationals or any entity refrain from providing any form of support, active or passive, to entities or persons involved in terrorist activities. Thus States were to combat terrorism in all its forms and manifestations.

It is worth mentioning that as part of the efforts to enhance maritime security after the 11 September incident, amendments were made to the International Convention on the Safety of Life At Sea (SOLAS)⁴⁷ to cater for special measures to enhance maritime security. Also the International Ship and Port Facility Code (ISPS)⁴⁸ was adopted. These instruments seek to adopt series of measures to strengthen maritime security and prevent and suppress acts of terrorism against shipping.

Following the developments, a text was drafted which sought to incorporate new offences in addition to the existing offences to deal with the issue of the maritime terrorism and related matters. In revising the 1988 SUA Convention, States Parties had the opportunity to update its provisions in line with subsequent counter-terrorism treaties, as well as

⁴³ Assembly Resolution A.924 (22) Review of measures and Procedures to Prevent Acts of Terrorism which threaten the Security of Passengers and Crews and the Safety of Ships adopted on 20 November 2001.

⁴⁴ Beckman, C Robert; Op.cit. at p. 191

⁴⁵ Kraska, et, al., Op.cit, p. 820.

⁴⁶ Adopted by the Security Council at its 4385th meeting, on 28 September 2001.

⁴⁷ Adopted 1 November 1974 and entered into force on 25 May 1980. The amendments were adopted on 12 December 2002 and entered into force on 1 July 2004.

⁴⁸ Adopted on 12 December 2002 and entered into force on 1 July 2004.

specifically confront new forms of maritime terrorism previously unknown to the international shipping community.⁴⁹

Consequently, the 2005 SUA Convention was adopted at a Diplomatic Conference on the Revision of the SUA Treaties held from 10 to 14 October 2005 at the London headquarters of the International Maritime Organisation.

5.1 SCOPE OF THE 2005 SUA CONVENTION.

The scope of application of this Convention is same as its predecessor the 1988 SUA Convention. Following the increasing incidents of terrorist activities all over the globe, the international community wanted a more comprehensive law to deal with all forms of maritime terrorism. Therefore the offences were expanded to embrace several modern day terrorists' schemes.

In this Convention, a person commits an offence if that person intentionally and unlawfully with the intention to intimidate a population, or compel an international organisation or government to do or to obtain from doing any act, uses against a ship any explosive, radioactive material, or a biological, chemical or nuclear weapons in a manner that causes or is likely to cause death, serious injury or damage.⁵⁰ Also it is criminal to discharge from a ship any oil, liquefied natural gas or other hazardous or noxious substances in such quantity⁵¹, or use a ship in a manner likely to cause death, injury or damage.⁵²

The creation of this offence is in the right direction because there is evidence that terrorists are increasingly using hazardous and dangerous substances which has potential negative impacts on human health and the marine environment. For example the use a biological, chemical or nuclear substances at sea may pollute the sea and the biodiversity. Eating of polluted fish and other sea food will affect the health of humans. The extent to which terrorists can unleash harm is unimaginable because they work in teams. These

⁴⁹ Klein, Nathalie; op.cit. p.171.

⁵⁰ Article 3bis 1(a) (i), 2005 SUA Convention.

⁵¹ Article 3bis 1(a)(ii), 2005 SUA Convention.

⁵² Article 3bis 1(a) (iii), 2005 SUA Convention.

groups are well organised in their recruitment, training, and operations including preparation of manuals for training and torture⁵³. For instance terrorist organisation such as al Qaeda's operations stretch across the globe and the group has owned up to be responsible for several attacks at different locations.

Furthermore, it is illegal for a person to transport on board a ship any explosives, or radioactive material where such a person knows the aforementioned substances are to be employed in causing harm for the purpose of intimidating population, or compelling a government, or an international organisation to do or obtain from doing something.⁵⁴ In addition, it is illegal for a person to knowingly transport biological, chemical and nuclear weapons.⁵⁵ Also it is an offence to transport any source material, special fissionable material or equipment or technology used for manufacturing weapons of mass destruction.⁵⁶ However this provision is inapplicable to States to enable them legitimately transport these substances for various reasons.⁵⁷

Prohibition against the transport of these hazardous substances is to ensure that terrorists do not use same to advance their intention of unlawful attacks. These substances may be used to manufacture all manner of explosives that may be used against ships. For example on 6 October 2002, terrorists rammed a boat full of explosives into the French tanker *MT Limburg* in the Gulf of Aden off the Yemeni coastline.⁵⁸ As a result, one crew member died and approximately 90,000 barrels of oil (roughly 4 million gallons) poured into the sea. The art of making bombs and other weapons of mass destruction has become easily feasible because of advanced technology. Also the proliferation of internet services and different websites complements the efforts of terrorist since what they need to know and learn can easily be found on the internet including possible information on the technology of making bombs and other weapons of mass destruction.

⁵³ McNicholas, Michael; Op cit.; p. 226.

⁵⁴ Article 3bis 1(b) (i), 2005 SUA Convention.

⁵⁵ Article 3bis 1(b)(ii), 2005 SUA Convention.

⁵⁶ Article 3bis, 2005 SUA Convention.

⁵⁷ Article 3bis (2), 2005 SUA Convention.

⁵⁸ <http://www.nytimes.com/2002/10/07/world/fire-on-french-tanker-off-yemen-raises-terrorism-fears.html>

Moreover, it is an offence for a person to intentionally and unlawfully transport on board a ship, another person suspected of committing any of the offences envisaged by the Convention for the purpose of assisting the suspect to evade prosecution.⁵⁹ This provision is to ensure that every offender does not escape unpunished, and should be made answerable for any wrongful act committed against a ship.

The Convention also criminalises inchoate offences such as attempting, participating, organising or contributing to the commission of any of the offences stipulated under the Convention.⁶⁰ Thus any form of facilitation aimed at the commission of the crime is abhorred, and it is immaterial whether the crime is actually accomplished or not.

An innovation in this Convention which was absent in the 1988 SUA Convention is that corporate bodies such as companies may be liable under the Convention through the action of its *alter ego* or persons, acting in official capacity for and on behalf of such a company.⁶¹ The punishment to be imposed may be criminal civil or administrative sanctions.⁶²

Another innovation is the boarding provision. The Convention requires that States Parties co-operate to the fullest extent possible to prevent and suppress unlawful acts at sea by permitting under certain conditions, the stopping, boarding and search of ships suspected to have committed, about to commit or is likely to commit any of the offences set forth in the Convention.⁶³ There is no denying that marine transportation is one of the easiest ways that terrorists may transport dangerous substances and weapons of mass destruction. Due to the structural uniqueness of a ship, these items may easily be hidden in cargo being carried on the ship or by hiding it in other compartments of the ship. This makes it fair for the Convention to provide for cooperation between States to enable boarding foreign vessels to inspect same if it is suspected to be involved in any of the acts prohibited by the Convention. It is argued that this provision does not in any way limit or infringe on the freedom enjoyed by a flag State under international law, since its exercise will be based on agreement between the States concerned.

⁵⁹ Article 3ter, 2005 SUA Convention.

⁶⁰ Article 3 quarter, 2005 SUA Convention.

⁶¹ Article 5 bis, 2005 SUA Convention

⁶² Article 5 bis, 2005 SUA Convention.

⁶³ Article 8bis, 2005 SUA Convention.

In addition, States Parties are to co-operate when it comes to extraditing an accused person or granting legal assistance in order to help in the prosecution of the offences under the Convention. Therefore none of the offences envisaged by the Convention is to be at any point given any political connotation so as to refuse or withhold extradition or mutual legal assistance.⁶⁴ However a State can refuse to extradite or withhold mutual legal assistance if it has prove that the request is repugnant, shrouded in reasons intended to discriminate based on the person's race, religion , nationality, ethnic origin, gender, or political opinion.⁶⁵

Finally a person who is being detained or serving a sentence in the territory of a State Party may be transferred to the territory of another State Party if the presence of that person is necessary to aid in the identification, testimony or provide assistance for the investigation, prosecution of any offence prescribed by this Convention.⁶⁶ However the person has to consent to such a transfer for the stated purpose. The competent authorities of the States involved must agree on the conditions applicable to such a transfer to and back to the original territory where the person was being detained or serving the sentence.

6. THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF, 2005(2005 SUA FIXED PLATFORMS PROTOCOL).

This Protocol was adopted at the Diplomatic Conference on the Revision of the SUA Treaties held from 10 to 14 October 2005 in London. It is a Protocol to the 2005 SUA Convention. The rationale for its promulgation is to afford protection to fixed platforms located on the continental shelf against unlawful acts and interferences.

6.1 SCOPE OF THE 2005 SUA FIXED PLATFORMS PROTOCOL.

The offences were expanded, and it is an offence for a person with the intention to intimidate a population, or compel an international organisation or government to do or to

⁶⁴ Article 11bis, 2005 SUA Convention.

⁶⁵ Article 11 ter, 2005 SUA Convention.

⁶⁶ Article 12bis, 2005 SUA Convention.

abstain from doing any act, uses against a fixed platform any explosive material, biological, chemical or nuclear weapons in a manner that causes or is likely to cause death, serious injury or damage.⁶⁷ Also it is criminal to discharge from a fixed platform oil, liquefied natural gas or other hazardous or noxious substances in such quantity or concentration which likely to cause death, injury or damage⁶⁸. A person is also guilty of an offence if the person injures or kills any person in the commission of any of the offences set forth in the Protocol⁶⁹.

The Platforms referred to by this Protocol are for the exploitation and exploration of the marine resource. In Considering platforms that are for the production of oil and gas, one will realized that a successful attack of such platforms will not only damage the edifice ,but will lead to loss of life of the workers onboard the platform. Also it will result in oil spill which will produce catastrophic ecological effects and pollution of the marine environment and harm to the biodiversity. The attendant result will be health problems as a result of consuming the polluted sea food.

The Protocol also criminalises inchoate offences such as attempting, participating, organising or contributing to the commission of any of the offences stipulated under the Convention.⁷⁰ Thus any form of facilitation aimed at the commission of the crime is abhorred, and it is immaterial whether the crime is actually accomplished or not.

In addition, the Protocol provides that the provisions of Article 1(c), (d), (e), (f), (g), (h) and 2 (a), 2bis, 5, 5bis 7, 10-16, 11bis, 11ter, and 12bis of the 2005 SUA Convention applies *mutatis mutandis* to the Protocol.⁷¹

7. THE GHANA MARITIME INDUSTRY.

Ghana is a coastal State with a coastline of about 539 kilometres.⁷² It shares maritime boundaries with Togo to the East, and La Cote d'Ivoire to the West. The Gulf of Guinea is to the South of the country. The country is blessed with two international sea ports being the Takoradi and Tema Ports. The maritime industry is still at the developing stage, and all necessary measures are being taken to ensure that its maritime domain is safe,

⁶⁷ Article 2bis, 2005, SUA Fixed Platforms Protocol.

⁶⁸ Article 2bis, 2005, SUA Fixed Platforms Protocol.

⁶⁹ Article 2ter (a), 2005 SUA Fixed Platforms Protocol.

⁷⁰Article 2 ter, 2005 SUA Fixed Platforms Protocol.

⁷¹ Article 1, 2005 SUA Fixed Platforms Protocol.

⁷² http://www.ghanaweb.com/GhanaHomePage/country_information/(last accessed on April 2014)

secure, and clean so as to make it attractive to the international shipping community. One of the ways the country seeks to achieve this is to ratify/accede and incorporate the relevant international conventions into domestic legislation, as well as enforce same. As a coastal State, it has responsibilities to ensure the security of vessels and port facilities within its Maritime jurisdiction to safeguard not only economic interests, but protect vessels, cargo, and the passengers and crew on these vessels.

Since no State can develop in isolation, Ghana joined and became a member of the United Nations. In furtherance of its membership, it ratified or acceded to many of the United Nations Conventions including the Vienna Convention on the Law of Treaties⁷³ to illustrate its commitment and acknowledgement that treaties foster relationship with other States. The country also joined the IMO in 1959 and has been an active member, taking part in negotiations of a number of international maritime conventions spearheaded by the IMO. It has also ratified a number of the landmark conventions and incorporated same into its domestic legislation. These include the International Conventions on Safety of Life at Sea (SOLAS),⁷⁴ Prevention of Pollution from Ships (MARPOL)⁷⁵, Standards of Training, Certification and Watchkeeping for Seafarers (STCW)⁷⁶, and on Load Lines (LL).⁷⁷

Even though Ghana is signatory to the 1988 SUA Convention and the 1988 SUA fixed platforms Protocol, it is not signatory to the 2005 SUA Convention and 2005 SUA fixed platforms Protocol. Since it is a member of the IMO, it is imperative that it takes steps to accede to the 2005 Convention and the Protocol, and incorporate same to give effect to the call by the IMO that all States must cooperate to fight terrorism and other unlawful acts at sea.

8. THE IMPORTANCE OF INCORPORATING THE 2005 SUA CONVENTION AND 2005 SUA FIXED PLATFORMS PROTOCOL INTO DOMESTIC LEGISLATION IN GHANA.

From the above discussions, it is evident that the Convention and Protocol are very important international instruments which have to be embraced by the international shipping community. The need for Ghana to accede to the Convention and the Protocol are numerous which includes the reasons that will be discussed *seriatim* herein.

⁷³ Adopted on 22 May 1969 and entered into force on 27 January 1980.

⁷⁴ Adopted on 1 November 1974 and entered into force on 25 May 1980.

⁷⁵ Adopted on 2 November 1973 and entered into force on 2 October 1983.

⁷⁶ Adopted on 7 July 1978 and entered into force on 28 April 1984.

⁷⁷ Adopted on 5 April 1966 and entered into force on 21 July 1968.

First of all, there is no existing domestic legislation that regulates unlawful acts and other maritime offences. In the event that the country encounters such a situation, the courts will be handicapped in dealing with it. Applying the normal criminal laws, may be inadequate in punishing the offenders appropriately.

The location of Ghana's maritime domain makes it unsafe and susceptible to activities of criminals. It is in the Gulf of Guinea which is a noted hotspot for piratical activities and other maritime crimes. Since this is already a volatile area, the country needs legislative backing to help in fighting the activities of criminal groups that operate in the sub region. In recent times, maritime insecurity in the Gulf of Guinea, had caused considerable concern to international shipping, due to the growing trend of unlawful acts against the safety of navigation and other offshore activities. Ghana's location within this region makes it imperative for measures to be put in place to enhance maritime domain awareness for the purpose of combating piracy, armed robbery and other unlawful activities at sea, to ensure effective management of its marine resources.

Furthermore, maritime security violations have the potential of affecting the territorial security of the country. For example, where the security enforcement agencies receive information that there is a likely hood of a terrorist attack at sea, or a vessel is carrying weapons of mass destruction from one point to the other, their attention might be diverted. The Navy, in collaboration with other relevant State apparatus and personnel may be so focused on surveillance on development at sea to the detriment of other incidents that may be going on in the remaining maritime zones or the land territory.

Moreover, what happens on the sea has corresponding effect on the economy of the land territory. For example if a shipping vessel is attacked on a commonly used international channel, it will have adverse effects on the economy of some States due to delay. For instance the Takoradi and Tema Ports in Ghana serve as transit points for land-locked countries such as Mali, Niger and Burkina Faso. So any adverse development on shipping in Ghana will by extension affect these countries as well.

Also there is need to prevent the carrying of weapons of mass destruction or substances used in manufacturing same, which may be used to cause havoc, both at sea and in the land territory.

Moving on to the Protocol, there is need for protection of fixed platforms located on the continental shelf against all forms of unlawful acts. Ghana is an oil producing country and has on its continental shelf oil and gas platforms, and related structures for

exploration and exploitation purposes. It is important that these structures are safeguarded from any unwarranted interferences which will be detrimental to their function. Also any attack on same may cause oil spill and possible pollution of the marine environment. On the other hand adverse effect on these platforms may affect the economic wellbeing and the development of the nation.

Closely related to the above point is the increasing global awareness of the dangers of oil spillage on the biodiversity and other resources at sea. Pollution of the marine environment extends to areas far beyond where the accident might have taken. Therefore attack or damage to these fixed platforms will have detrimental consequences. This informs yet another reason why Ghana must implement the Protocol.

In conclusion, it is essential that Ghana accedes and incorporate the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005 (2005 SUA Fixed Platforms Protocol into domestic legislation. By taking this step, the country will join the international community in the fight against maritime terrorism and other unlawful acts at sea which affect the safety and security of the maritime industry as a whole.

9. HOW INTERNATIONAL CONVENTIONS ARE INCORPORATED INTO DOMESTIC LEGISLATION IN GHANA.

In accordance with international law, there are two basic theories when it comes to the status of international conventions in the domestic sphere of sovereign States. The Dualist theory is that where a country signs or accedes to a convention on the international plane, the provisions of the convention do not automatically become binding on the domestic courts and the citizens unless same is domesticated or incorporated into the laws of that State. The other position is the Monist theory which is to the effect that immediately a State signs or accedes to a treaty it automatically becomes binding on the domestic courts and citizenry of that State.

Ghana is considered a dualist State and employs the dualist approach enumerated above to international conventions or treaties. A treaty is defined by the Vienna Convention on the Law of Treaties⁷⁸ as an international agreement concluded between States in writing

⁷⁸ Adopted on 22 May 1969 and entered into force on 27 January 1980.

governed by international law.⁷⁹ The 1992 Constitution of Ghana provides that a treaty, agreement or a convention executed by or under the authority of the President shall be subject to ratification by an Act of Parliament.⁸⁰ Thus, when the Republic ratifies a convention internationally, same has to be ratified domestically, in accordance with the procedures stipulated by the Constitution. Failure to adhere to the pre-determined procedures will render the purported law *void ab initio*. According to the Constitution, the sources of law for Ghana include enactments made by or under the authority of the Parliament established by the Constitution.⁸¹ It is therefore necessary that international conventions satisfy the procedure relating to incorporation into domestic legislation in order to attain the status of enforceable law; binding on the courts and the citizenry of Ghana.

It is proposed that In order for the provisions of The Convention on the Suppression of Unlawful Acts against the Safety of Navigation (2005 SUA Convention) and the Protocol on Suppression of Unlawful Acts against the Safety of Fixed Platforms on the Continental Shelf (2005 SUA Protocol) to have the force of law in Ghana, same have to be incorporated through parliamentary processes. The incorporation shall be achieved by enacting a new Act to give effect to suppression of unlawful acts which affect safety of navigation, and the safety of fixed platforms located on the continental shelf, and related matters.

Most often than not, the incorporation of an international convention in the country is usually spearheaded by the relevant ministry or agency. The Ghana Maritime Authority (GMA) which has the mandate to pursue the ratification or accession, and implementation of international maritime conventions will initiate the process in relation to this Convention and Protocol in conjunction with the Ministry of Transport. Other stake holders in the maritime industry will be notified to contribute, by submitting proposals for consideration in order to enhance the new legislation.

⁷⁹ Article 2, Vienna convention on the Law of Treaties.

⁸⁰ Article 75(2), 1992 Constitution of the Republic of Ghana.

⁸¹ Article 11, 1992 Constitution of the Republic of Ghana.

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THE REPUBLIC OF GHANA



INSTRUMENT OF ACCESSION

BY GHANA,

WHEREAS the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 was open for signature at the Headquarters of the International maritime Organization from 14 February 2006 to 13 February 2007,
AND WHEREAS Article 17 of the Convention provides that any State may accede to it,

NOW THEREFORE I, Minister for Foreign Affairs declare that the Government of Ghana, having considered the above-mentioned Convention accedes to same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of accession at Accra on20xx.

DATE
SEAL

AFFAIRS)

SIGNED

(MINISTER FOR FOREIGN

THE REPUBLIC OF GHANA



INSTRUMENT OF ACCESSION

BY GHANA,

WHEREAS the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005 was open for signature at the Headquarters of the International maritime Organization from 14 February 2006 to 13 February 2007,

AND WHEREAS Article 8 of the Protocol provides that any State may accede to it,

NOW THEREFORE I, Minister for Foreign Affairs declare that the Government of Ghana, having considered the above-mentioned Protocol accedes to same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of accession at Accra on20xx.

DATE
SEAL

SIGNED

(MINISTER FOR FOREIGN

AFFAIRS)

CHAPTER 2

PARLIAMENTARY MEMORANDUM.

2.1 INTRODUCTION.

The maritime domain of Ghana is an important natural resource for the country. It serves as a means of transportation, between the country and other countries and thus facilitates the export of raw materials and import of finished products into the country. The bulk of the revenue for developmental projects comes from the export of these raw materials and other Ghana made products. Ships which call at the two main Ports pay various levies and fees which contribute to accruing revenue for improving the economy of the country. Ships navigating to and from Ghana need to be protected from intentional and unlawful

acts which are likely to damage or endanger the safe navigation of the ships, and the lives of the crew and passengers on board same.

Also, the seabed is a major source of mineral resources. The recent oil and gas discovery in the exclusive economic zone of the country testifies to this fact. In contemporary times, oil and gas platforms have been objects of terrorist activities and disgruntled groups in certain societies. A very close example to Ghana are the activities of the Movement for the Emancipation of the Niger Delta(MEND) group who have been carrying out wanton attacks on offshore exploration and production facilities off the Nigerian coast. Therefore, the fixed platforms located within Ghana's continental shelf for the purposes of exploration and exploitation of oil and gas need to be protected because they are vulnerable, and may easily become targets of unlawful attacks for criminal political or ideological reasons.

Also in recent times, maritime insecurity in the Gulf of Guinea, has caused considerable concern to international shipping, due to the growing trend of unlawful acts against the safety of navigation and other offshore activities. Since Ghana's maritime domain is in this location, there it deserves to take all measures to assist in the fight against such miscreants.

Furthermore, the nation depends a lot on the biodiversity for food, and it is estimated that fish provides the Ghanaian population with about sixty percent of protein needed. The sea needs to be secured so that fishermen can fish without the fear of attacks. Continued employment for these fishermen and ability to provide for their dependants, rest solely on the striving success of the fishing industry. Also a safe and clean maritime environment is essential in this regard.

For these and many reasons, it is necessary that Ghana accedes, and incorporate the provisions of the Convention and the Protocol into domestic legislation to regulate and prevent commission of unlawful acts against ships and offshore platforms within Ghana's maritime jurisdiction and beyond.

2.2 AN OVERVIEW OF THE DRAFT BILL.

This overview is to explain the provisions as contained in the Draft Bill. The purpose is to enable a reader to have a quick grasp of what the Bill is all about.

The procedure adopted for incorporating the above conventions is the conventional method employed in Ghana to incorporate all international conventions. For this reason, the interpretation section which is the first Article in the Convention and the Protocol has

been moved to the end of the Draft Bill so that it will adhere to the style of legislations in the country.

The Bill incorporates fully the provisions of the;

1. International Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention), and
2. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005 (2005 SUA Fixed Platforms Protocol).

The structural framework of the Bill is divided into four Parts:

Part One applies to the Act as a whole. It relates to preliminary matters and prescribes the situations in which the Act will apply. Ghana has also established jurisdiction over certain persons and offences in accordance with Article 6 of the 2005 SUA Convention and the Protocol. Under the Act, there are certain matter which requires communication between Ghana and the international maritime organization, authorised authorities of States which are party to the above cited Convention and Protocol and related issues. To make this process easy there is need to assign responsible with regards to such matters. Therefore Ghana Maritime Authority has been tacked with the mandate to regulate such correspondences. It does not however have a role in adjudicating over the offences envisaged by the Act. However this will not preclude it from serving as witness in such proceedings.

Part Two covers provisions which relate to navigating ships and spells out unlawful acts which are deemed as offences if carried out against a ship. Also some of the provisions apply to the crew and passengers that are onboard any attacked ship. The provisions of this Part apply to only that Part and not the Act as a whole. It is sub divided into three chapters for easy of reference.

Part Three relates to fixed platforms located on the continental shelf. It prescribes the acts which are offences if carried out against affixed platform. The provisions of this Part applies only therein and not the Act as a whole. It is subdivided into two chapters.

Part Four is on general provisions. These apply to all the Parts and the Act as a whole. Basically among other things, it stipulates matters to be considered in arresting, detaining and prosecuting offenders under the Act. The extradition provision which is a very

important one is under this Part. Also the interpretation section is in this Part because it applies to the whole of the Act.

Also included in the Draft Bill is Annex 1 which contains a list of international conventions under which the rights, obligations and responsibilities of Ghana will not be affected notwithstanding what is set forth in the present Act. A person must not assist an alleged offender to escape so as to evade standing for trial if the offence alleged to have been committed is envisaged under this Act or if one which is an offence under any of the international conventions listed in Annex 2.

Section 1 deals with the application of the Act.

Section 2 deals with the exceptions where by the Act does not apply to warships and other ships used by law enforcement bodies, and government ships used for non commercial purposes.

Section 3 this deals with additional instances where the provisions of the Act will be invoked.

Section 4 deals with the regulatory authority for some aspects of the Act which is the Ghana Maritime Authority.

Section 5 to 8 deals with illegal acts such as seizure of ships by force, acts of violence against persons on board ships, and the placing of devices on board a ship, tempering with navigational facilities which are likely to hamper the safe navigation of the ship.

Section 9 prohibits acts which are intended to threaten persons or corporate bodies to do or refrain from doing something.

Section 10 deals with certain acts which a person engages in, with the intent to intimidate a population or compel a government or an international organisation to do or refrain from doing something.

Section 11 prohibits the transportation of biological, chemical or nuclear weapons, explosive or radioactive material, special fissionable material and equipment and devices which could be used for the manufacturing of weapons of mass destruction. However, these materials may be transported by a State Party to the Treaty on the Non Proliferation of Nuclear Weapons.

Section 12 and 26 cover situations where a person with the intent to commit any offence envisaged by the Act occasions injury to a person or cause the death of a person.

Section 13 deals with inchoate offences of attempting, participating, organising, and contributing to the commission of an offence contemplated by the Act.

Section 14 prohibits giving assistance to persons who have committed any offence envisaged by the Act to evade prosecution, by transporting the accused person on a ship or facilities the transportation of the said person.

Under *Section 15 and 28* a corporate body is deemed to be liable for an offence provided for by the Act, if a person acting in an official capacity for the corporate body commits the offence.

Section 16 creates a penalty for a corporate body to pay if its authorised office commits any of the offences envisaged under Part of the Act. This amount is in penalty units to be converted to the prevailing currency rates at any material time.

Section 17 provides that a master of a ship flying the flag of the country must hand over a person or persons who the master suspects to have committed any of the offences contemplated by the Act. The master is to notify a State Party to the conventions before entering the territorial sea of the State Party if the intention is to deliver the suspect to the authorities of that State.

Section 18 deals with the right and circumstances under which the Ghana Maritime Authority can accept delivery of a suspect on behalf of Ghana, if a master of a foreign ship notifies the Ghana Maritime Authority of the intention to deliver a suspect. Acceptance for delivery is however based on ascertaining whether the offence the person is accused of having committed is envisaged by the Act.

Section 19 provides that the law enforcement bodies in the country may co-operate with relevant authorities of a State Party to suppress the commission of unlawful acts against ships.

Section 20 deals with circumstances under which a relevant law enforcement body in the country may stop, board, or conduct search on a foreign ship. However before these measures can be taken, the State Party whose flag the ship was flying at that material time must be notified of the intention to stop, board, or search same. Without the express authorisation of that State, such measures may not be undertaken.

Section 21 deals with considerations which have to be adhered to if the relevant law enforcement body stops, boards, or conduct search on the ship.

Under *Section 22* where the Ghana Maritime Authority receives a request from the relevant authority of a State Party of its intention to board a ship flying the flag of this country, the Ghana Maritime Authority may accept or decline the request, after considering the circumstances of the case.

Section 23 to 28 deals with offences against fixed platforms located on the continental shelf of the country.

Section 29 deals with jurisdiction where the competent court to adjudicate on issues arising from the provisions of the Act is the High Court.

Section 30 provides that the Attorney General's Department and the prosecution division of the Ghana Police Service will be in charge of prosecution of offenders under the Act.

Section 31 deals with the punishments and sanctions to be imposed when a person is found guilty of committing any of the offences enumerated in the Act.

Section 32 provides for an enforcement body which will be responsible to exercise the powers of arrest, detention and investigation of persons who have committed or suspected to have committed any of the offences under the Act.

Section 33 deals with the actual arrest and detention of a person who has committed or is suspected to have committed any of the offences set forth in the Act.

Under *Section 34* a person who has been placed in custody is to have the right of communicating with the officials of the consulate or embassy of the country where that person is a citizen. If the person is a citizenless person, then the officials of the country where that person habitually resides will apply.

Section 35 deals with preliminary investigation into the circumstances of the offence for which the person was taken into custody.

Section 36 provides that the person so arrested and detained must be given an expeditious and fair trial in accordance with the laws of the country.

Section 37 deals with the procedure to follow in order to transfer a person serving a sentence in the country to another State which requests for the person for the purposes of identification, testimony or to assist in providing evidence for the investigation or prosecution of offences envisaged under the conventions.

Section 38 covers extradition and provides that when the country decides not to exercise jurisdiction over an accused person, it may extradite the person to another State Party to stand trial if that State requests for extradition.

Section 39 covers the circumstances under which the high court will refuse to extradite a person to another State to stand trial even if the circumstances of the case so warrant.

Section 40 provides that the country may give legal assistance to another country which is party to the conventions, provided the assistance is needed to deal with matters envisaged by this Act.

Section 41 gives power to the Minister responsible for transport to make regulations for any issues relating to the Act.

Section 42 covers interpretation of words and terms used in the Act which needs to be understood in a certain context.

CHAPTER 3

ARRANGEMENT OF SECTIONS

Section

PART ONE----- APPLICATION AND PRELIMINARY MATTERS

1. Application
2. Exceptions
3. Additional Jurisdiction
4. Regulatory Body

PART TWO-----PROVISIONS RELATING SHIPS, CREW AND PASSENGERS ONBOARD THOSE SHIPS.

CHAPTER ONE

5. Violence against a ship
6. Placing Dangerous Device on a Ship

7. Interfering with Navigational Facilities
8. Communicating False Information
9. Threatening a Person or Corporate Body
10. Intimidating a Population, Government, or International Organisation
11. Transporting Certain Dangerous and noxious Substances on Board a Ship
12. Causing Injury or Death

CHAPTER TWO

13. Accessory offences
14. Protecting an Offender from Prosecution
15. Liability of Corporate Bodies
16. Penalty

CHAPTER THREE

17. Responsibility of a Master of a Ship Registered in Ghana
18. Right to Accept or Refuse Delivery an Alleged Offender
19. Co-Operation with Other States Parties to Suppress Unlawful Acts against Ships
20. Boarding Provisions
21. Safeguards
22. Request to board ships flying the flag of Ghana

PART THREE-----PROVISIONS RELATING TO FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF.

CHAPTER ONE

23. Violence against fixed platforms
24. Threatening a Person or Corporate Body
25. Intimidating a Population, Government, or an International Organisation
26. Causing Injury or Death

CHAPTER TWO

- 27. Liability of Corporate Bodies
- 28. Accessory offences

PART FOUR-----GENERAL APPLICATION

- 29. Designated Courts
- 30. Prosecution
- 31. Punishments and Sanctions
- 32. Enforcement Body
- 33. Detention of an offender or alleged offender
- 34. Right to Communication
- 35. Preliminary Investigation
- 36. Right to an expeditious trial
- 37. Transfer of Persons
- 38. Extradition
- 39. Grounds to Refuse an Extradition Request
- 40. Mutual Legal Assistance
- 41. Powers of the Minister
- 42. Interpretation

Annex 1 The rights, obligations and responsibilities of Ghana are not affected under these Treaties

Annex 2 Treaties.



The xxxxxxxxxxxx

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

THE GHANA MARITIME OFFENCES ACT, 2014 (ACT XXX)

AN ACT to give effect to the suppression of unlawful acts which affect safety and security of maritime navigation and of fixed platforms located on the continental shelf and for other related matters.

PASSED by Parliament and assented to by the President: on.....day of.....20xx.

PART ONE

APPLICATION AND PRELIMINARY MATTERS.

Application.

1. Unless the context otherwise requires, this Act shall apply to:

- (a) a ship if that ship is navigating or scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of Ghana or the lateral limits of its territorial sea with adjacent States; or
- (b) fixed platforms located on the continental shelf within Ghana's maritime jurisdiction.

Exceptions.

2. This Act shall not apply to:

(1)

- (a) a warship; or
- (b) Government ships operated for non-commercial services; or
- (c) a ship owned or operated by a State and used, for the time being only as a naval auxiliary, or for customs, or police purposes; or
- (d) a ship which has been withdrawn from navigation or laid up; or
- (e) lawful activities of armed forces during an armed conflict; or
- (f) lawful activities undertaken by military forces of a State in the exercise of their official duties,

(2) Nothing in this Act shall affect the rights, obligations, and responsibilities of Ghana under the international conventions listed under Annex 1 herein.

Jurisdiction.

3. (1) Notwithstanding section 1, the competent court shall have jurisdiction if any of the offences contained in this Act is committed:

- (a) against or on board a ship registered or licenced in accordance with the Ghana Shipping Act, 2003 (Act 645); or
- (b) against or on board a fixed platform while it is located on the continental shelf within Ghana's maritime jurisdiction; or
- (c) within the territory of Ghana, including its territorial sea; or
- (d) in a port or offshore terminal within Ghana's maritime jurisdiction; or
- (e) by a citizen of Ghana; or

- (f) by a stateless person, who habitually resides in Ghana; or
- (g) in an attempt to compel the government of Ghana to do or obtain from doing any act.

(2) The Act shall also apply to a person found in the territory of Ghana, who is alleged to have committed any of the offences contained in this Act, provided that such a person will not be extradited to stand trial in another State which is party to the instruments contained in section 35 (a) and (b) herein.

(3) Without prejudice to subsection (1) and (2), this Act shall apply to any person who seizes, threatens, injures, or kills a citizen of Ghana during the commission of any maritime offence notwithstanding the fact that the offence is not committed within the territory of this country.

Regulatory Body.

4. For the purposes of this Act, the Authority shall be responsible to:

- (a) receive information relating to the implementation of this Act; or
- (b) respond to requests for assistance or co-operation as set forth in this Act; or
- (c) confirm the nationality of ships flying the flag of Ghana; or
- (d) communicate all information required under this Act to the Organisation; or
- (e) notify the Secretary-General of the establishment of jurisdiction in matters contained in section 3 herein, as well as when jurisdiction in those matters is subsequently rescinded.

PART TWO.

PROVISIONS RELATING TO SHIPS, CREW AND PASSENGERS ON BOARD THOSE SHIPS.

CHAPTER ONE

Violence against a ship.

5. A person commits an offence within the meaning of this Part, if the person unlawfully and intentionally:

- (a) seizes or exercises control over a ship, by means of force, threat or any other form of intimidation; or
- (b) performs an act of violence against a person or persons on board a ship if that act is likely to endanger the safe navigation of that ship; or
- (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship.

Placing Dangerous Device on a Ship.

6. For the purposes of this Part, a person commits an offence if the person unlawfully and intentionally places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to

- (a) cause damage to that ship; or
- (b) destroy that ship, or
- (c) damage or destroy its cargo

which endangers or is likely to endanger the safe navigation of that ship.

Interfering with Navigational Facilities.

7. It is also an offence, if a person unlawfully and intentionally destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship.

Communicating False Information.

8. For the purposes of this Part, a person also commits an offence if the person unlawfully and intentionally communicates information which that person knows to be false, thereby endangering the safe navigation of a ship.

Threatening a Person or Corporate Body.

9. It is an offence if a person threatens, with or without an intention, for the purpose of compelling another person or a corporate body to do or refrain from doing any act,

commits any of the offences set forth in sections 5 (b) and (c), and 6 if that threat is likely to endanger the safe navigation of the ship in question.

Intimidating a Population, Government, or International Organisation.

10. A person commits an offence within the meaning of this Part if the person unlawfully and intentionally acts with the purpose to intimidate a population, or to compel a Government, or an international organisation to do or to abstain from doing any act:

- (a) uses against or on a ship or discharges from a ship any explosive, radioactive material or biological, chemical or nuclear weapon in a manner that causes or is likely to cause death or serious injury or damage; or
- (b) discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subsection (a) in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
- (c) uses a ship in a manner that causes death or serious injury or damage; or
- (d) threatens with or without intention to commit any of the offences contained in subsection (a), (b) or (c).

Transporting Certain Dangerous and noxious Substances on Board a Ship.

11. (1) For the purposes of this Act, a person commits an offence under this Part if the person unlawfully and intentionally transports on board a ship;

- (a) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death or serious injury or damage for the purpose of intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act; or
- (b) any biological, chemical or nuclear weapon, knowing it to be a biological, chemical or nuclear weapon as defined in this Act; or
- (c) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of

special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity. Provided that such activity, is not under any safeguards pursuant to an International Atomic Energy Agency comprehensive safeguards agreement; or

- (d) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a biological, chemical or nuclear weapon, with the intention that it will be used for such purpose.

(2) (a) Notwithstanding the provisions of subsection 1, nothing shall be construed to constitute an offence within the meaning of this Part to transport:

- (i) an item or material covered by subsection 1(c) or, insofar as it relates to a nuclear weapon or other nuclear explosive device.
- (ii) an item or material covered by subsection 1(d), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons.

(b) subsection (2) (a) (i) and (ii) shall apply, where:

- (i) the resulting transfer or receipt, including internal to a State, of the item or material is not contrary to such State Party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons; and
- (ii) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is contrary to that State Party's obligations under that Treaty.

Causing Injury or Death.

12. A person also commits an offence within the meaning of this Part if the person unlawfully and intentionally injures or kills any person in connection with the commission of any of the offences set forth in sections 5, 6, 7, 8, 10, 11 and 14.

CHAPTER TWO

Accessory offences.

13. Within the meaning of this Part, a person commits an offence if the person:

- (a) attempts to commit any of the offences contained in sections 5, 6, 7, 8, 12 or 10 (a), (b), and (c), notwithstanding whether by reason of any circumstances the crime could not be accomplished as intended; or
- (b) participates as an accomplice in any of the offences contained in Chapter One of this Part, section 13 (a) or section 14; or
- (c) organises or directs others to commit any of the offences contained in Chapter One of this Part, section 13 or 14; or
- (d) contributes to the commission of one or more of the offences contained in Chapter One of this Part, section 13(a) or 14 by a group of persons acting with a common purpose, intentionally and either:
 - (i) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence contained in Chapter One of this Part or section 14; or
 - (ii) in the knowledge or the intention of the group to commit an offence contained in Chapter One of this Part or section 14.

Protecting an Offender from Prosecution.

14. (1) Within the meaning of this Part, a person commits an offence if the person unlawfully and intentionally, with knowledge that another person has committed an act that constitute an offence contained in Chapter One or section 13;

- (a) transports that other person on a ship; or
- (b) facilitates the transport of that other person,

with the intention to assist the person to evade prosecution or stand for trial.

(2) A person also commits an offence if the person engages in any of the activities contained in subsection (1) (a) and (b) with the knowledge that the other person has committed an act which is an offence in any of the treaties listed in Annex 2.

Liability of Corporate Bodies.

15. (1) Nothing set forth in this Act may be construed to exempt a corporate body from liability for any of the offences under this Part.

(2) For the purposes of subsection 1, a corporate body shall be deemed liable if a person, who manages, controls or acts for and on behalf of that corporate body as an Officer commits any of the offences set forth in this Part. Provided that at the time the offence was committed, the Officer was carrying out the duties for and on behalf of that corporate body in an official capacity.

(3) For the purposes of subsection (1), a corporate body includes;

- (a) a corporate body registered under the Companies Act, 1963 (Act 179); or
- (b) a partnership registered under the Incorporated Partnership Act, 1962 (Act 152);
or
- (c) a foreign company in registered joint venture relationship with a Ghanaian National or company; or
- (d) a foreign company which has a place of business in the country.

(4) Nothing in this section shall be construed as excluding the Officer from any criminal liability personally incurred in relation to the offence. The relevant punishment prescribed in this Act shall apply accordingly to such an Officer.

Penalty

16. Within the meaning of this Part, a corporate body found liable on summary conviction shall pay a fine not exceeding seven hundred thousand (700,000) penalty units.

CHAPTER THREE

Responsibility of a Master of a Ship Registered in Ghana.

17. (1) A master of a ship flying the flag of the country, may deliver to the relevant authority of a State which is Party to the Convention referred to in Section 19(1)(a) any person who the master has reasonable grounds to believe has committed any of the offences set forth in this Part.

(2) The master of a ship referred to in subsection (1) whenever practicable, and if possible before entering the territorial sea of the State Party whom the master intends to deliver the person being carried on board, shall give notification to the relevant authorities of that State Party of the intention to deliver such person and give the reasons therefor.

(3) The master shall make available to the authorities of that State Party any evidence in the master's possession which pertains to the alleged offence.

Right to Accept or Refuse Delivery of an Alleged Offender.

18. (1) Where a master of a ship flying the flag of another State Party notifies the Authority in Ghana of the intention to deliver a person who the master has reasonable grounds to believe has committed an offence, the Authority shall accept the delivery, provided that the Authority has enquired of the particulars of the offence.

(2) If the Authority has grounds to believe that the offence complained of is not applicable to this Act, it may refuse to accept delivery of the person accompanied by a statement of the reasons for refusal.

(3) Where the Authority accepts delivery in accordance with subsection (1), it shall inform the relevant enforcement unit to take charge of the person. The provisions of sections 33, 34, 35 and 36, as set forth in this Act shall apply.

(4) Where the Authority has accepted the delivery of the person in accordance with Subsection (1), it may, in turn, request the State Party whose flag the ship is flying to accept delivery of that person.

Co-operation with Other States Parties to Suppress Unlawful Acts against Ships.

19. (1) The Relevant law enforcement unit in the country shall respond expeditiously as possible to request for co-operation from the appropriate authorised officials of a State Party to the:

- (a) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention)

on matters relating to the provisions contained in the Convention which are applicable to both States.

(2) Pursuant to subsection (1), the enforcement unit shall co-operate to the fullest extent possible, with the State which makes a request, to prevent and suppress an unlawful act which both States have assumed jurisdiction in their respective domestic legislations.

(3) In furtherance of subsection (2) the relevant enforcement unit may request the following if possible:

- (a) the name of the suspect ship;
- (b) the Organisation's ship identification number;
- (c) the Port of registry;
- (d) the Ports of origin and destination; and
- (e) any other relevant information.

(4) Where a State Party requests for assistance to prevent or suppress an offence, the relevant law enforcement unit shall use its best endeavours to render such assistance within the means available to it.

(5) where the enforcement unit has reasonable grounds to suspect that an offence set forth in this Part has been, is being or is about to be committed involving a ship flying the flag of Ghana, it may also request the assistance of other States Parties in preventing or suppressing the offence.

Boarding Provisions

20. (1) The relevant enforcement unit in the country may stop, board, and search a ship belonging to another State Party if it is located seaward of the country's territorial sea, and there is reasonable grounds to suspect that the ship or a person on board the ship has been, is or is about to be involved in the commission of an offence set forth in this Part.

(2) Pursuant to subsection (1), the relevant enforcement unit shall not stop, board, or search the ship unless;

- (a) it makes a request using the most appropriate means of communicating at that time to the State Party whose flag the ship is flying, requesting it to confirm the nationality of the ship.
- (b) it requests for authorisation to stop, board and search the ship, its cargo and persons on board, and questioning the persons on board in order to determine if an offence set forth in the Part has been, is being or is about to be committed.
- (c) the State Party expressly gives authorisation to carry out what is contained in (b) above, and the measure being taken should not exceed what was expressly given.

(3) When evidence of conduct described in this Act is found as the result of the boarding conducted pursuant to subsection (2), the enforcement unit shall promptly inform the State Party of the results of the boarding, search, and any detention conducted.

(4) Where there is discovery of evidence of illegal conduct that is not subject to the offences set forth in this Part, the enforcement unit shall also promptly inform the State Party.

(5) When carrying out the authorised actions under this section, the use of force shall be avoided except when necessary to ensure the safety of enforcement unit's officials and persons on board, or where the officials are obstructed in the execution of the authorised actions. Any use of force pursuant to this section shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances.

Safeguards

21. Where the enforcement unit in the country has authorisation from the State Party pursuant to section 20 to take measures against the ship, it shall:

- (a) take due account of the need not to endanger the safety of life at sea;
- (b) ensure that all persons on board are treated in a manner which preserves their basic human dignity, and in compliance with the applicable provisions of international law, including international human rights law;
- (c) ensure that a boarding and search pursuant to section 20 shall be conducted in accordance with applicable international law;
- (d) take due account of the safety and security of the ship and its cargo;
- (e) take due account of the need not to prejudice the commercial or legal interests of the State Party;
- (f) ensure, within available means, that any measure taken with regard to the ship or its cargo is environmentally sound under the circumstances;
- (g) ensure that persons on board against whom proceedings may be commenced in connection with any of the offences set forth in the Act, are afforded the all protections and rights set forth in this Act regardless of the location of the operation;
- (h) ensure that the master of the ship is advised of its intention to board, and is, or has been, afforded the opportunity to contact the ship's owner and the State Party at the earliest opportunity;
- (i) take reasonable efforts to avoid the ship being unduly detained or delayed;
- (j) not interfere with the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea;
- (k) not interfere with the authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the ship.

Request to board a ship flying the flag of Ghana

22. (1) Where the authorised officials of a State Party request for authorisation to stop, board, or search a ship flying the flag of Ghana, the Authority acting in conjunction with the relevant law enforcement unit in Ghana may either:

- (a) authorise the requesting State Party to take appropriate measures to stop, board, or search the ship;
- (b) request for additional information or impose conditions on the extent of measures the State Party can take ;
- (c) request that a relevant enforcement unit in the country will conduct the boarding and search instead;
- (d) demand that the relevant enforcement unit in Ghana will conduct the boarding and search together with the authorised officials of the State Party ;
- (e) decline to authorise the boarding and search.

(2) In considering the request referred to in subsection (1), the Authority shall require an undertaking from the authorised officials of the State Party that it may be liable when;

- (a) the grounds for such measures prove to be unfounded, provided that the ship has not committed any act justifying the measures taken; or
- (b) such measures taken are unlawful or exceed those reasonably required in light of available information to implement the provisions of the authorisation given.
- (c) and that the State Party shall provide effective recourse in respect of such damage, harm or loss arising from the measures taken.

(3) Pursuant to subsection (1), if the authorised officials of the State Party informs the Authority of the results of the boarding, the Authority in consultation with the relevant enforcement unit, may authorise that the ship, cargo, persons on board the ship are detained until further instruction is given to those authorised officials on what to do with the ship cargo and the persons on board the ship.

(4) Notwithstanding subsection (1) and (2), a court in Ghana may exercise jurisdiction over a detained ship, cargo or other items and persons on board, including seizure, forfeiture, arrest and prosecution. However, nothing prevents the court from denying jurisdiction if the circumstances so demand, and consent to the exercise of jurisdiction by another State Party which has requested to exercise jurisdiction over the matter.

PART THREE

PROVISIONS RELATING TO FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF

CHAPTER ONE

Violence against fixed platforms

23. A person commits an offence within the meaning of this Part, if the person unlawfully and intentionally:

- (a) seizes or exercises control over a fixed platform by means of force threat or any other form of intimidation; or
- (b) performs an act of violence against a person or persons on board a fixed platform if that act is likely to endanger its safety; or
- (c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
- (d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety.

Threatening a Person or Corporate Body

24. It is an offence if a person threatens, with or without an intention, for the purpose of compelling another person or a corporate body to do or refrain from doing any act, commits any of the offences contained in section 23(b) and (c), if that threat is likely to endanger the safety of the fixed platform.

Intimidating a Population, Government, or an International Organisation

25. A person commits an offence within the meaning of this Part if the person unlawfully and intentionally acts with the purpose to intimidate a population, or to compel a Government, or an international organisation to do or to abstain from doing any act:

- (a) uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or biological, chemical or nuclear weapon in a manner that causes or is likely to cause death or serious injury or damage; or
- (b) discharges, from a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subsection (a) in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
- (c) Threatens with or without an intention to commit any of the offences set forth in subsection (a) or (b).

Causing Injury or Death

26. A person also commits an offence within the meaning of this Part if the person unlawfully and intentionally injures or kills any person in connection with the commission of any of the offences contained in sections 23 and 25.

CHAPTER TWO

Accessory offences

27. Within the meaning of this Part, a person commits an offence if the person:

- (a) attempts to commit any of the offences contained in sections 23, 25(a) or (b), or 26 notwithstanding whether by reason of any circumstances the crime could not be accomplished as intended; or
- (b) participates as an accomplice in any of the offences contained in Chapter One of this Part, or section 27(a); or
- (e) organises or directs others to commit any of the offences contained in Chapter One of this Part, or section 27(a); or
- (f) contributes to the commission of one or more of the offences contained in Chapter One of this Part, or section 27(a) by a group of persons acting with a common purpose, intentionally and either:
 - (i) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence contained in section 24, 25 or 26; or
 - (ii) in the knowledge or the intention of the group to commit an offence set forth in section 24, 25 or 26.

Liability of Corporate Bodies

28. (1) Nothing set forth in this Act may be construed to exempt a corporate body from liability for any of the offences under this Part.

(2) For the purposes of this Part a corporate body shall be deemed liable if a person, who manages, controls or acts for and on behalf of that corporate body as an Officer, commits any of the offences set forth in this Part. Provided that at the time the offence was committed, the Officer was carrying out the duties for and on behalf of that corporate body in an official capacity.

(3) For the purposes of subsection (1), the corporate body includes;

- (a) a corporate body registered under the Companies Act, 1963 (Act 179); or
- (b) a partnership registered under the Incorporated Partnership Act, 1962 (Act 152); or
- (c) a foreign company in registered joint venture relationship with a Ghanaian National or company; or
- (d) a foreign company which has a place of business in the country.

(4) Subsection (1) shall not be construed as excluding the Officer from any criminal liability in relation to the offence. The relevant punishment prescribed in this Act shall apply accordingly if such an Officer is found personally liable.

(5) Within the meaning of this Part, a corporate body found liable on summary conviction shall pay a fine not exceeding seven hundred thousand (700,000) penalty units.

PART FOUR

GENERAL APPLICATION

Designated Courts

29. (1) The High Court shall have jurisdiction and preside over all issues relating to prosecution of the offences and other related matters set forth in this Act.

(2) Without prejudice to the provision of this section, an appeal shall lie from a judgment of the High Court to the Court of Appeal, and to the Supreme Court.

Prosecution

30. The Attorney General in conjunction with the prosecution division of the Ministry of Justice shall have the power to prosecute all the offences set forth in this Act.

Punishments and Sanctions

31. (1) A person found guilty of committing any of the offences contained in sections 5, 6, 7, 8, 9, 10, 11, 23, 24 and 25 set forth in this Act, shall after trial on summary

conviction be sentenced to a term of imprisonment not less than fifteen (15) years, but not exceeding twenty five (25) years.

(2) A person found guilty of committing any of the offences contained in sections 12 and 26 set forth in this Act, shall after trial on summary conviction be sentenced to a term of imprisonment not less than ten (10) years, but not exceeding fifteen (15) years, provided it did not result in the death of any person.

(3) Where death results in connection with the commission of any of the offences set forth in this Act, the person shall be guilty and on conviction after trial on indictment, be sentence to death.

(4) A person found guilty of committing any of the offences contained in sections 13 and 27 set forth in this Act, shall after trial on summary conviction be sentenced to a term of imprisonment not less than five (5) years, but not exceeding fifteen (15) years.

(5) For the avoidance of any doubt, where a person is found guilty under this Act for which a punishment has not been prescribed, the punishment shall be the same as a similar offence in accordance with the Criminal and other Offences Act, 1960 (Act,29).

Enforcement Body.

32. (1) Without prejudice to anything contained in this Act, the powers of arrest, detention or investigation, and matters incidental to the powers shall be vested in the relevant law enforcement units.

(2) There shall be collaboration between members of the law enforcement units in the country in dealing with matters relating to the provisions of this Act.

(3) The Minister may by a Gazette publication confer power on any authority or persons to perform any of the functions envisaged under this section.

Detention of an offender or alleged offender.

33. (1) where there are reasonable grounds that a person suspected to have committed any of the offences set forth in this Act is in the country, the appropriate enforcement body, upon being satisfied that the circumstances so warrant, shall arrest the person.

(2) Pursuant to subsection (1), the person shall be taken immediately into custody, or any measure taken to ensure the continued presence of the person in the country until such time that the person faces trial or is extradited in accordance with section 38.

(3) Nothing in this section shall be construed to exclude the provisions relating to general arrest procedures prescribed in accordance with the Criminal Procedure Act, 1960 (Act 30).

(4) Where the person referred to in subsection (1), goes into hiding to evade arrest, the necessary steps must be taken to ensure that the person does not leave the country. Such relevant information may be provided to the enforcement units all over the country for purposes of identifying the person.

Right to Communication.

34. (1) The person referred to in section 33 shall have a right to immediately communicate with the Diplomatic Head or a similar official of the consulate or embassy of the State, to which that person is a national. Where the circumstances make it difficult to establish the nationality of the person, the State where that person is habitually resident will apply.

(2) The detained person shall not be denied a right of visits by the persons referred to in subsection (1), provided that the appointment to visit is made within a reasonable time of the day.

Preliminary Investigation.

35. Preliminary inquiry shall be conducted into the circumstances which warranted the detention of the person referred to in section 33. Such information without delay shall be communicated to all the States which are Parties to the:

- (a) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention); or
- (b) Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005 (2005 SUA Fixed Platforms Protocol).

Where the country does not intend to exercise jurisdiction over the suspected person, a statement to that effect must be included.

Right to an expeditious trial.

36. (1) Where a competent court in the country decides to assume jurisdiction over a person to whom section 33 applies, the person shall:

- (a) be given an expeditious and fair trial; and

(b) have a right to legal representation in court during the entire period of the trial;
and

(c) enjoy the rights relating to criminal trials set forth in the 1992 Constitution of the Republic of Ghana.

(2) For matters relating to procedure during trial not expressly provided for in this Act, the Court shall have recourse to the relevant provisions set forth in the Criminal Procedure Act, 1960(Act 30).

Transfer of a detained or suspected Persons

37.(1) A competent court may hear an application brought by a State Party requesting the transfer of a person who is being detained or is serving a sentence in the country for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigation or prosecution of offences in the territory of that State. Provided that;

- (a) the requesting state has established jurisdiction over offences contained in the conventions referred to in section 35 (a) and (b); and
- (b) the person freely gives informed consent to be transferred; and
- (c) the person may not be prosecuted or detained or subjected to any other restriction of personal liberty in the territory of that State in respect of acts or convictions anterior to that person's departure from the country; and
- (d) the State agrees to return the person to the country without the country having to initiate extradition proceedings for the return of the person, and
- (e) the State agrees to expeditiously carry out the purpose for which the person was transferred so as to return the person without delay to the country.
- (f) The competent authorities of the country and that of the State agree to such conditions as may be deemed appropriate.

(2) The person transferred shall receive credit for service of the sentence being served in the country for time spent in the custody of the requested State to which the person was transferred.

Extradition.

38. (1) A person who has committed any of the offences set forth in this Act may be extradited to stand trial in the territory of a State Party which makes an extradition request for that person.

(2) A request for extradition referred to in subsection (1) shall be made by application and considered before a competent court.

(3) For the purposes of this Act, all offences set forth in this Act shall be deemed to be included as extraditable offences in any extradition treaty or agreement that exist between the country and any State which is party to the;

(a) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention), and

(b) Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005 (2005 SUA Fixed Platforms Protocol)

(4) Where a request referred to in subsection (1) is made, and there is no existing extradition treaty or agreement between the country and that State, this Act shall be considered as the legal basis for allowing extradition provided that the State is party to the instruments contained in subsection 3(a) and (b).

(5) For the purposes of extradition under this Act, the offences for which the person stands accused will be deemed as having been committed in the territory of that State making the request for extradition.

(6) The court shall not consider an extradition application, unless the Attorney General decides not to prosecute the person accused of committing any of the offences set forth in this Act.

(7) Where a court receives more than one extradition request for the person, it shall in considering the request have due regard to all the surrounding circumstances of the case. Consideration should be given to a State which;

(a) is Party to the instruments referred to in subsection 3(a) and (b); or

- (b) provides evidence to prove that it has established in its national law jurisdiction in accordance with Article 6 of the Convention referred to in subsection 3(a); or
 - (c) flag the ship was flying at the time of the commission of the offence ; or
 - (d) will accord the accused person all the human rights, and a fair trial in that State, considering all the existing facts of the case.
- (8) In considering an extradition application, none of the offences set forth in this Act shall be regarded as;
- (a) concerning a political offence; or
 - (b) an offence connected with a political offence; or
 - (c) an offence inspired by political motives.

thereby to refuse the grant of extradition.

Grounds to Refuse an Extradition Request.

39. Nothing in this Act shall be construed as imposing an obligation on a court to extradite a person, if the Court has substantial grounds to believe that the request for extradition has been made for the purpose of prosecuting or punishing the person on account of that person's:

- (a) race;
- (b) religion;
- (c) nationality;
- (d) ethnic origin ;
- (e) political opinion; or
- (f) gender.

or that compliance with the request would prejudice that person's position for any of the above reasons.

Mutual Legal Assistance.

40. (1) The Attorney General may make a request to a State Party to the instruments referred to in section 38(3) (a) and (b), for mutual legal assistance to prosecute any of the offences set forth in this Act, if that State has established in its jurisdiction similar offences relating to those set forth in the instruments.

(2) Where the Attorney General receives a request from a State Party for mutual legal assistance, the Attorney General may consider the request.

(3) Where that State referred to in subsection (2) has jurisdiction over offences which are the same or similar to those contained in this Act, none shall be construed as concerning a political offence or an offence connected with a political offence or an offence inspired by political motives so as to deny legal assistance requested by that State.

(4) Where a request referred to in subsection (2) is received, nothing in this Act shall be construed as imposing an obligation on the Attorney General to afford mutual legal assistance if there is substantial grounds to believe that the request has been made for the purpose of prosecuting or punishing an accused person on grounds which are similar to those contained in section 39(a-f).

Powers of the Minister.

41. For the purposes of this Act, the Minister may by Legislative Instrument make Regulation for efficiently carrying out the provisions of this Act.

Interpretation.

42. In this Act, unless the context otherwise requires,

“Authority” means Ghana Maritime Authority.

“authorised officials” means uniformed or otherwise clearly identifiable members of law enforcement or other government authorities duly authorised by their government.

“biological weapons”, means biological weapons which are:

(a) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or

(b) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

“corporate body” includes a company, a firm or partnership.

“chemical weapons” means chemical weapons which are, together or separately:

(1) toxic chemicals and their precursors, except where intended for:

(a) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or

(b) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or

- (c) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
- (d) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes;

(2) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in (1), above which would be released as a result of the employment of such munitions and devices;

(3) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in (2) above.

“Continental Shelf” means the continental Shelf of Ghana as provided by the section 6 of the Maritime Zones (Delimitation) Act, 1986 (PNDCL 158).

“country” means Ghana.

“court” means the High Court of judicature.

“enforcement unit” includes the regular Police, Marine Police, Navy, and Customs.

“Fixed Platforms” means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

“Ghana’s maritime jurisdiction” means the jurisdiction exercisable by Ghana within the internal waters, territorial sea, exclusive economic zone and the continental shelf as defined in the Maritime Zones (Delimitation) Act, 1986 (PNDCL 158).

“Minister” means the Minister for Transport.

“nuclear” means nuclear weapons and other nuclear explosive devices.

"Officer" includes any officer, chairman, director, trustee, manager, secretary, treasurer, cashier, clerk, auditor, accountant, or other person provisionally, permanently, or temporarily charged with or performing any duty or function in respect of the affairs of the company or corporation, whether for or without any remuneration.

“Organisation” means the International Maritime Organization (IMO).

“precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.

“Secretary-General” means the Secretary-General of the Organization.

“serious injury or damage” means:

- (a) serious bodily injury; or

(b) extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss; or

(c) substantial damage to the environment, including air, soil, water, fauna, or flora.

“ship” means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles, or any other floating craft.

“source material” has the same meaning as given to it in the Statute of the International Atomic Energy Agency (IAEA), done at New York on 26 October 1956

“special fissionable material” has the same meaning as given to it in the Statute of the International Atomic Energy Agency (IAEA), done at New York on 26 October 1956.

“State Party” means a state which is party to the

(a) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention), and

(b) Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the continental shelf, 2005 (2005 SUA Protocol)

“territorial sea” means the territorial sea of Ghana as provided by the section 1 of the Maritime Zones (Delimitation) Act, 1986 (PNDCL 158).

“toxic chemical” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

“transport” means to initiate, arrange or exercise effective control, including decision-making authority, over the movement of a person or item.

Signed

The Mister of Transport

Entered into force on.....

Annex 1.

The rights, obligations and responsibilities of Ghana are not affected under these Treaties.

1. Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London and Moscow on 1 July 1968.
2. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London and Moscow on 10 April 1972.
3. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993.

Date of Gazette notification:

Annex 2.

Treaties

1. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
2. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
3. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.
4. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.
5. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

Date of Gazette notification: